

REMARKS

This responds to the Office Action dated April 27, 2007.

Claims 1, 10, 13, and 18 are amended. No claims are cancelled or added. As a result, claims 1-20 remain pending in this patent application.

Objection to the Claims

Claim 10 was objected to due to an informality. Applicant has amended the claim to overcome this objection. Accordingly, Applicant respectfully requests withdrawal of this objection.

§103 Rejection of the Claims

1. Claims 1-4, 7-15 and 18-20 were rejected under 35 U.S.C. § 103(a) for obviousness over DeGroot (U.S. Patent No. 5,987,356). Applicant respectfully traverses this single-reference obviousness rejection.

The Office Action apparently only relies on one reference, namely DeGroot, to assert disclosure, teaching, or suggestion of the claimed elements under 35 U.S.C. § 103(a). Applicant respectfully submits that no *prima facie* case of obviousness presently exists because the cited portions of DeGroot do not disclose, teach, or suggest, all elements of claims 1-4, 7-15, and 18-20.

The Office Action concedes that there is no disclosure (and accordingly no teaching, or suggestion) of “deadfront status indicator lamps each including a deadfront icon that is illuminated for viewing on a front of the case, the icons differentiated from each other by the use of different non-textual pictorial graphic shapes,” as presently recited in claim 1, and similarly recited in claims 13 and 18. However, the Office Action contends that:

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the status indication system and method as taught by DeGroot, with the use of deadfront status indicator lamps/icons being illuminate by LEDs or different colored LEDS ... to communicate the status information to allow the operator to use their visual sense to determine the status of the device which can aid in noisy environments, to allow the device to clearly indicate the status to allow the operator to easily distinguish between different conditions....

Office Action at p. 3, lines 3-14. However, the cited portions of DeGroote do not provide such a motivation. Instead, DeGroot merely states:

The particular audio and visual signals provided to the patient are of course, arbitrary, and any set of similar warning signals which allows the patient to reliably distinguish between the three states ... are believed to be workable in the context of the present invention.

DeGroot at col. 36, line 63 – col. 37, line 2 (emphasis added). Applicant respectfully submits that DeGroot does not provide the motivation that the Office Action recites, but instead apparently merely provides an impetus to maintain distinct combinations of audio and visual signals such that the patient can distinguish between each combination. In particular, DeGroot does not discuss any purported advantages of visual indicators in a noisy setting, as the Office Action asserts. DeGroot's device, which uses LEDs, is arguably sufficient for its very basic intended purpose; no objective evidence of record suggests that one should look to improve DeGroot with deadfront icons as asserted in the Office Action. Instead, the rejection's asserted "motivation to combine" appears to be nothing more than the use of impermissible hindsight based on Applicant's own patent application in an attempt to justify such a combination.

Similarly, the Office Action concedes that there is no disclosure (and accordingly no teaching, or suggestion) of voice signal or a natural language message, as presently recited in claims 3 and 4. However, the Office Action contends that:

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the status indication system and method as taught by DeGroot ... using natural language messages to communicate the status information to ... provide natural voice/language messages so the operator does not get confused between different tones and does not have to remember what different tones mean.

Office Action at p. 3, lines 3-14. As discussed above, this was apparently not a concern described in DeGroot that would provide such a motivation as stated by the Office Action. DeGroot's device, which uses tones or other audible signals, is arguably sufficient for its very basic intended purpose; no objective evidence of record suggests that one should look to improve

DeGroot with voice signals or natural language messages as asserted in the Office Action.

Instead, the rejection's asserted "motivation to combine" appears to be nothing more than the use of impermissible hindsight based on Applicant's own patent application to justify such a combination.

Furthermore, to the extent that this rejection constitutes a single-reference obviousness rejection under § 103, Applicant notes for the record that the Examiner appears to taking official notice of the missing elements, which is timely traversed herein under M.P.E.P. § 2144.03, and if the Examiner is aware of a reference providing support for the assertion, citation of such reference is respectfully requested. If a reference cannot be provided, Applicant submits the assertion is formed on personal knowledge and Applicant requests that an affidavit be provided, as required by 37 C.F.R. § 1.104(d). In the absence of such a reference or affidavit, Applicant respectfully requests that this 35 U.S.C. § 103 rejection be withdrawn.

2. Claims 1-4, 7-16 and 18-20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Musley et al. (U.S. 2004/0210256). Applicant respectfully traverses this single-reference obviousness rejection.

The Office Action apparently only relies on one reference, namely Musley, to assert disclosure, teaching, or suggestion of the claimed elements under 35 U.S.C. § 103(a). Applicant respectfully submits that no *prima facie* case of obviousness presently exists because the cited portions of Musley do not disclose, teach, or suggest, all elements of claims 1-4, 7-16, and 18-20.

The Office Action concedes that there is no disclosure (and accordingly no teaching, or suggestion) of "deadfront status indicator lamps each including a deadfront icon that is illuminated for viewing on a front of the case, the icons differentiated from each other by the use of different non-textual pictorial graphic shapes," as presently recited in claim 1, and similarly recited in claims 13 and 18. However, the Office Action contends that:

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the status indication system and method as taught by Musley, with the use of deadfront status indicator lamps/icons being illuminate by LEDs or different colored LEDS ... to communicate the status information to allow the operator to use their visual sense to determine the status of the device which can aid in noisy

environments, to allow the device to clearly indicate the status to allow the operator to easily distinguish between different conditions....

Office Action at p. 4, lines 13-22. The cited portions of Musley do not provide such a motivation. Musley's device, which uses printed labels with associated LEDs, is arguably sufficient for its very basic intended purpose; no objective evidence of record suggests that one should look to improve Musley with deadfront icons as asserted in the Office Action. Instead, the rejection's asserted "motivation to combine" appears to be nothing more than the use of impermissible hindsight based on Applicant's own patent application to justify such a combination.

Similarly, the Office Action concedes that there is no disclosure (and accordingly no teaching, or suggestion) of voice signal or a natural language message, as presently recited in claims 3 and 4. However, the Office Action, relying on Musley, then goes on to contend that:

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the status indication system and method as taught by Musley ... using natural language messages to communicate the status information to ... provide natural voice/language messages so the operator does not get confused between different tones and does not have to remember what different tones mean.

Office Action at p. 3, lines 3-14. The cited portion of Musley does not disclose, teach, or suggest using audio messages or tones. Instead, the rejection's asserted "motivation to combine" appears to be nothing more than the use of impermissible hindsight based on Applicant's own patent application to justify such a combination.

Furthermore, to the extent that this rejection constitutes a single-reference obviousness rejection under § 103, Applicant notes for the record that the Examiner appears to taking official notice of the missing elements, which is timely traversed herein under M.P.E.P. § 2144.03. If the Examiner is aware of a reference providing support for the assertion, citation of such reference is respectfully requested. If such a reference cannot be provided, Applicant submits the assertion is formed on personal knowledge, and Applicant requests that an affidavit be provided, as required by 37 C.F.R. § 1.104(d). In the absence of such a reference or affidavit, Applicant respectfully requests withdrawal of this 35 U.S.C. § 103 rejection.

3. Claims 5, 6, 16 and 17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over DeGroot (U.S. Patent No. 5,987,356) or Musley et al. (U.S. 2004/0210256) as applied to the claims above. Applicant respectfully traverses this rejection.

Concerning claims 5, 6, and 17

As an initial note, Applicant recognizes that the Office Action apparently only relies on one reference, DeGroot or Musley in the alternative, to assert disclosure, teaching, or suggestion of the claimed elements under 35 U.S.C. § 103(a). Applicant respectfully submits that no *prima facie* case of obviousness presently exists because the cited portions of Musley do not disclose, teach, or suggest, all elements of claims 5, 6, and 17. In particular, as discussed above, the cited references fail to disclose, teach, or suggest at least the element of “deadfront status indicators,” as recited in these claims. Instead, the rejection’s asserted “motivation to combine” appears to be nothing more than the use of impermissible hindsight based on Applicant’s own patent application to justify such a combination, as discussed above.

Furthermore, to the extent that this rejection constitutes a single-reference obviousness rejection under § 103, Applicant notes for the record that the Examiner appears to taking official notice of the missing elements, which is timely traversed herein under M.P.E.P. § 2144.03. If the Examiner is aware of a reference providing support for the assertion, citation of such reference is respectfully requested. If such a reference cannot be provided, Applicant submits the assertion is formed on personal knowledge and Applicant requests that an affidavit be provided, as required by 37 C.F.R. § 1.104(d). In the absence of such a reference or an affidavit, Applicant respectfully requests withdrawal of this 35 U.S.C. § 103 rejection.

Concerning claim 16

Claim 16 depends from independent claim 13 and is therefore believed allowable for the reasons presented above. Applicant considers the additional elements of claim 13 to further distinguish over the cited references, and Applicant reserves the right to present arguments to this effect at a later date. In sum, Applicant respectfully requests withdrawal of this rejection of these claims.

Furthermore, to the extent that this rejection constitutes a single-reference obviousness rejection under § 103, Applicant notes for the record that the Examiner appears to taking official

notice of the missing elements, which is timely traversed herein under M.P.E.P. § 2144.03. If the Examiner is aware of a reference providing support for the assertion, citation of such reference is respectfully requested. If such a reference cannot be provided, Applicant submits the assertion is formed on personal knowledge and Applicant requests that an affidavit be provided, as required by 37 C.F.R. § 1.104(d). In the absence of such a reference or affidavit, Applicant respectfully requests withdrawal of this 35 U.S.C. § 103 rejection.

RESERVATION OF RIGHTS

In the interest of clarity and brevity, Applicant may not have equally addressed every assertion made in the Office Action, however, this does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6951 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

RICHARD E. STEIN ET AL.

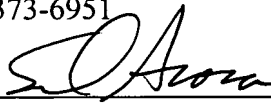
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July 26, 2007

By



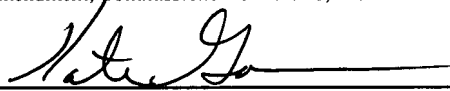
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 26 day of July 2007.

KATE CANNON

Name



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